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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,532	03/01/2004	Mark S. Gasaway	HO-P02877US0	5168
26271	7590	08/26/2005	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			MILLS, DANIEL J	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/790,532

Applicant(s)

GASAWAY ET AL.

Examiner

Daniel J. Mills

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because the phrase "the present invention is directed to" in lines 1 and 6 should be deleted.

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Drawings***

The drawings are objected to because figures 2 and 10c appear to illustrate a different invention than all other figures; . Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after

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the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 20 is objected to because of the following informalities: "lest" line 9 should be changed to "least". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 20, 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. "via a notch in the tab" is not a method step.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See

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MPEP § 2172.01. The omitted structural cooperative relationships are: whether the "at least one post" line 3 is the same as "at least one post" line 4; whether the "at least one member" line 3 is the same as " line 4.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. "via a notch in the tab" is not a method step.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 10-11, 13-17, 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Carroll (US 5,330,066).

Regarding claim 1, Carroll discloses a brace assembly comprising, at least one post (13), comprising at least one stabilizing surface (23) and at least one securing surface (27), at least one member (35), comprising at least one tab (39), wherein said stabilizing surface comprises at least one opening (31), and said securing surface comprises at least one tab-slot (33), wherein said member passes through said opening in the stabilizing surface, and wherein said tab engages said tab slots in said securing surface.

Regarding claim 2, Carroll discloses a brace assembly wherein said stabilizing (23) surface and said securing surface (27) are both in the outer surface of said post.

Regarding claim 3, Carroll discloses a brace assembly further comprising at least one angle brace foot post (41), and at least one angle brace member (17).

Regarding claim 4, Carroll discloses a brace assembly wherein said post (13) is comprised of metal tubing (13 forms a rectangular tube).

Regarding claim 6, Carroll discloses a brace assembly wherein said opening (31) corresponds in shape and size to said member (35).

Regarding claim 7, Carroll discloses a brace assembly wherein said member passes snugly through said opening.

Regarding claim 8, Carroll discloses a brace assembly wherein said opening is located directly opposite to at least one tab-slot, so that the longitudinal axis of the member is oriented at an angle of about 90° relative to said stabilizing surface.

Regarding claim 10, Carroll discloses a brace assembly wherein the size and shape of said tab-slots corresponds to said tabs.

Regarding claim 11, Carroll discloses a brace assembly wherein the tab is engaged with the tab-slot by welding (column 4 lines 47-50). The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 13, Carroll discloses a brace assembly as set forth in claim 13. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "cut by laser" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 14, Carroll discloses a method for assembling a brace assembly, comprising, providing at least one post (13 is provided), comprising at least one stabilizing surface (27) and at least one securing surface (23), providing at least one member (35 is provided), comprising at least one tab (39), wherein said stabilizing surface comprises at least one opening (31), and said securing surface comprises at least one tab-slot (33), passing said member through said opening (this is inherent), and passing said tab into said tab-slot (this is inherent).

Regarding claim 15, Carroll discloses a method for assembling a brace assembly wherein said tab engages in its corresponding tab-slot without requiring welding or additional fastening (column 4 lines 45-47).

Regarding claim 16, Carroll discloses a method for assembling a brace assembly wherein the tab is engaged with the tab-slot by welding (column 4 lines 47-50).

Regarding claim 17, Carroll discloses a method for assembling a brace assembly further comprising passing said member through said opening at an angle wherein the longitudinal axis of the member is at approximately a 90° angle to the stabilizing surface.

Regarding claim 20, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled, the kit comprising, at

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least one post (13), capable of being joined to at least one member (35), at least one member (35), capable of being joined to at least one post (13), said post comprising, at least one stabilizing surface (23), comprising at least one opening (31), and at least one securing surface (27), comprising at least one tab-slot (33), said member comprising, at least one tab (39), wherein said member is capable of penetrating said opening in said stabilizing surface of said post, and wherein said tab on said member is capable of engaging the tab-slot in said securing surface of said post, and whereby said member may be joined to said post.

Regarding claim 21, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein said opening (31) in said post (13) corresponds in shape and size to said member (35).

Regarding claim 22, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein said tab-slot in said post corresponds in shape and size to said tab.

Regarding claim 23, Carroll discloses a kit for assembling a fence brace assembly having component parts capable of being assembled wherein the tab is engaged with the tab-slot by welding (column 4 lines 47-50). The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab" has been given only limited patentable weight. See MPEP § 2113.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066).

Regarding claim 5, Carroll discloses a brace assembly wherein said member (35) is comprised of metal channel. Carroll fails to disclose that tubular metal is used for said member (35). However, it was well known in the art at the time of applicant's invention that box section tubular metal member are stiffer and stronger than channel metal members, and therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use a tubular box section member due to increased strength and stiffness. No new or unexpected results would have been seen from this change.

Claims 9, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066) as applied to claims 1-4, 6-8, 10-11, 13-17, 20-23, above, and in further view of Shaw (US 6,406,003).

Regarding claim 9, Carroll discloses a brace assembly wherein said opening (31) is not directly opposite, but offset from at least one tab-slot (33) (the lower portion of 31 is offset from the upper tab-slot 33). Carroll fails to disclose that the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface.

Shaw teaches an angle brace assembly wherein the longitudinal axis of the member (64) is oriented at a non 90° angle relative to said stabilizing surface (surface of 62B) in order to brace the post (62B) (column 4 lines 56-57). Therefore it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify the arrange of Carroll to include an angle brace assembly as taught by Shaw wherein the longitudinal axis of the member is oriented at a non 90° angle relative to said stabilizing surface, such that one lower tab (39) of the member (35) is inserted into the upper tab-slot (33) of the post (13).

Regarding claim 18, Carroll in view of Shaw discloses a method for assembling a brace assembly further comprising passing said member through said opening at an angle wherein the longitudinal axis of the member is at a non 90° angle to the stabilizing surface.

Claims 12, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5,330,066) as applied to claims 1-4, 6-8, 10-11, 13-17, 20-23, above, and in further view of Sweeney and Sylva (Sweeney - US 823,451).

Regarding claim 12, Carroll discloses a brace assembly but fails to disclose at least one recess in the securing surface capable of receiving a bent tab.

Sweeney teaches at least one recess (17) in the securing surface (into which 15 is inserted) capable of receiving a bent tab (15) for the purpose of giving a good appearance free from crevices, and giving a rigid connection. Accordingly it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to

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modify the arrangement of Carroll to include a recess as taught by Sweeney for the purpose of giving a good appearance free from crevices, and giving a rigid connection.

Regarding claim 19, Carroll in view of Sweeney discloses a method for assembling a brace assembly further comprising bending (the operation of riveting is a process of bending or distortion - see column 3 line 5) said tab (7) over an edge of said tab-slot (the inner edge of bevel 17) into a recess (17) in said securing surface, such that said tab is flush with said securing surface.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kyle (US 917,083), Boyle (US 1,320,982), Gorsline (US 1,473,817), Pressnall (US 2,640,567), Larson (US 3,232,378), Husband (US 4,390,103), D'Avanzo (US 5,120,025), Parisien (US 5,496,016), Poliquin (US 6,199,336), Armstrong et al. (US 6,643,988), Tomlinson et al. (US 6,682,055), Thompson (US 1,808,082), Abbott et al. (US 4,189,250), are cited for pertaining to brace structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM  
8-8-2005

A handwritten signature in black ink, reading "Daniel P. Stodola". The signature is fluid and cursive, with a large initial "D" and "S".

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600